

(2) When an employee returns from a temporary promotion to another NSPS position, the employee's current base salary rate must be reconstructed as if the employee had not been temporarily promoted. For this purpose, the employee will be deemed to have received performance pay increases under § 9901.342 and other increases in base salary under §§ 9901.344 and 9901.345 equal to the percentage value of such increases actually received by the employee during the temporary promotion. However, any such increases must be applied as if the employee were in the position and band held immediately before the temporary promotion (*i.e.*, using the rate range and any applicable control points for that band). The employee will also be credited with any general salary increases provided during the temporary promotion that would have been applied to the employee if he or she had continued to hold the position held immediately before that temporary promotion. A reduction-in-band increase upon return to the previous position (or comparable position) under this paragraph is not authorized. (See § 9901.342(1) for rules governing pay setting for an employee who returns to an NSPS position after being temporarily assigned to a non-NSPS position.)

(d)(1) An employee on pay retention who is re-promoted to the pay band from which reduced (or a comparable band) is not automatically entitled to have his/her pay set in accordance with the promotion rules described in paragraphs (a) and (b) of this section. If the employee's retained rate falls within the rate range of the newly assigned pay band, the authorized management official may maintain the same base salary upon re-promotion, or increase the employee's base salary to a rate above his or her retained rate. However, the employee's new base salary may not exceed the rate that would be provided using the promotion rules described in paragraphs (a) and (b) of this section. The employee's retained rate will be used when calculating any increase approved by an authorized management official. If the employee's retained rate falls below the minimum rate of the newly assigned pay band, the employee's base salary must be set

at least at the minimum rate of the band. If the employee's retained rate is higher than the maximum rate of the newly assigned pay band, pay retention will continue (subject to the requirements of § 9901.356).

(2) An employee who is promoted to a pay band higher than the one from which previously reduced in band will be covered by the promotion rules described in paragraphs (a) and (b) of this section. The employee's retained rate will be used when calculating the 6 percent (or higher) increase.

§ 9901.355 Setting pay upon reduction in band.

(a) *General.* When an employee is reduced in band, either voluntarily or involuntarily, the setting of the employee's base salary rate is subject to the rules in this section. As applicable, pay retention provisions established under § 9901.356 will apply. If pay retention does not apply, the employee's base salary may be reduced, subject to the requirements in paragraph (b) of this section. The employee may be eligible for an increase to base salary, subject to the requirements in paragraph (c) of this section.

(b) *Pay reduction.* An employee's base salary may be reduced upon reduction in band, subject to the following requirements:

(1) No base salary reduction is made when pay retention is applicable, except under paragraph (b)(4) of this section.

(2) The reduction in base salary may not cause the rate to fall below the minimum rate of the employee's new band.

(3) The base salary must be reduced as necessary to ensure that the new base salary is no greater than the maximum rate of the employee's new band.

(4) Adverse action procedures in 5 U.S.C. chapter 75 must be applied when an employee is involuntarily placed in a position in a lower pay band for unacceptable performance and/or conduct. In this circumstance, the authorized management official may reduce the employee's base salary. If such a reduction is made, it must be at least 5 percent, but no more than 10 percent, of

§ 9901.355

5 CFR Ch. XCIX (1–1–10 Edition)

an employee's base salary after applying adverse action procedures. However, a reduction in base salary under this paragraph may be less than 5 percent to prevent the employee's base salary from falling below the minimum rate of the employee's new pay band and may be more than 10 percent if a larger reduction is needed to place the employee at the maximum rate of the lower band. (See also § 9901.343.)

(5) If an employee held a position with a targeted local market supplement or a non-NSPS position prior to the reduction in band, the pay reduction is applied using adjusted salary rates, consistent with the reassignment rules in § 9901.353(c) (including, as appropriate, a geographic recalculation prior to applying the decrease, consistent with the provisions of § 9901.351(b)).

(c) *Pay increase.* An employee's base salary may be increased by an authorized management official upon reduction in band, subject to the following requirements:

(1) An employee who is reduced in band involuntarily—e.g., through reduction-in-force (RIF) procedures or by placement through the DoD Priority Placement Program (PPP) or Reemployment Priority List (RPL)—is not eligible for an increase to base salary (except if necessary to set the employee's base salary at the minimum rate of the new pay band).

(2) When an employee voluntarily moves to a lower pay band, the authorized management official may increase the employee's base salary, but must set the employee's base salary within the rate range for the employee's band. An increase in base salary may be up to 5 percent of the employee's current base salary (not to exceed the maximum of the rate range). This increase of up to 5 percent is deemed to be a "reassignment increase" for the purpose of applying the 12-month limitation in § 9901.353(b)(2). Also, in applying this increase, adjusted salary rates will be used when an employee held a position with a targeted local market supplement or a non-NSPS position prior to the reduction in band, consistent with the reassignment increase rules in § 9901.353(c) (including, as appropriate, a geographic recalculation prior to ap-

plying the increase, consistent with the provisions of § 9901.351(b)). This increase is subject to higher-level approval. At a minimum, the higher-level approval may be no lower than one level above the authorized management official who approved the reduction in band, unless there is no higher-level management official.

(3) After setting the employee's NSPS adjusted salary, the adjusted salary will be apportioned between the employee's base salary and the appropriate local market supplement or targeted local market supplement.

(4) A decision to increase an employee's pay under paragraph (c)(2) of this section will be based on—

(i) Critical mission or business requirements;

(ii) The need to advance multi-functional competencies;

(iii) The labor market conditions (i.e., availability of candidates, labor market rates for similar types of employees);

(iv) Reassignment from non-supervisory to supervisory position;

(v) Location of position;

(vi) Required specialized skills, knowledge, or education possessed by the employee;

(vii) Performance-based considerations; and

(viii) The base salary rates paid to other employees in similar positions in the lower pay band.

(d) *Termination of temporary promotion.* This section does not apply to a reduction in band associated with the termination of a temporary promotion. Instead, the rules in § 9901.354(c)(2) apply.

(e) *Failure to complete probationary period.* When an employee who fails to complete a supervisory probationary period is reduced in band upon return to the position held before the probationary period (or a comparable position), the employee's current base salary rate must be reconstructed as if the employee had not been promoted. For this purpose, the employee will be deemed to have received performance pay increases under § 9901.342 and other increases in base salary under §§ 9901.344 and 9901.345 equal to the percentage value of such increases actually received by the employee during

the promotion. However, any such increases must be applied as if the employee were in the position and band held immediately before the promotion (*i.e.*, using the rate range and any applicable control points for that band). The employee will also be credited with any general salary increases provided during the promotion that would have been applied to the employee if he or she had remained in the position held immediately before that promotion. A reduction-in-band increase upon return to the previous position (or comparable position) under this paragraph is not authorized. (See § 9901.342(1) for rules governing pay setting for an employee who returns to an NSPS position after being temporarily assigned to a non-NSPS position.)

§ 9901.356 Pay retention.

(a) Pay retention prevents a reduction in base salary that would otherwise occur by preserving the former rate of base salary within the employee's new pay band or by establishing a retained rate that exceeds the maximum rate of the new pay band. Local market supplements are not considered part of base salary in applying pay retention.

(b) Pay retention will be based on the employee's rate of base salary in effect immediately before the action that would otherwise reduce the employee's rate. A retained rate will be compared to the range of rates of base salary applicable to the employee's position.

(c) Pay retention will be granted for a period of 104 weeks. The Secretary may issue implementing issuances describing exceptions to the 104-week retention limit.

(d) Under NSPS, pay retention will be granted when an employee's base salary would otherwise be reduced in the following situations:

(1) As the result of reduction in force or reclassification;

(2) When an otherwise eligible employee is placed through the Priority Placement Program (PPP), including placement resulting from early registration, even though the employee does not have a specific reduction in force (RIF) notice;

(3) When an organization undergoes realignment or reduction, and

(i) An employee who would not be affected personally requests a reduction in band;

(ii) Management determines the employee's reduction in band results in placement in a more suitable position; and

(iii) That action lessens or avoids the impact of the RIF on other employees;

(4) When an employee accepts a position in a lower pay band designated in advance by the component as being hard-to-fill using any of the following criteria:

(i) Rates of pay offered by non-Federal employers are significantly higher than those payable under NSPS for the area, location, occupational group, or other class of positions involved;

(ii) The remoteness of the area or location involved;

(iii) The undesirability of the working conditions or the nature of the work involved (including exposure to toxic substances or other occupational hazards); or

(iv) Any other circumstances the Component considers appropriate, subject to review and approval by an official who is at a higher level than the official who made the initial decision;

(5) When an employee is reduced in band on return from an overseas assignment under the terms of a pre-established agreement including—

(i) An employee released from a period of service specified in his or her current transportation agreement due to an involuntary, management-initiated action other than for unacceptable performance and/or misconduct;

(ii) An employee, who has completed more than one year of service under a current agreement, released from a transportation agreement for compelling humanitarian or compassionate reasons; and

(iii) A non-displaced overseas employee under no obligation to return to the United States who is otherwise eligible for PPP registration in accordance with DoD Instruction 1400.20;

(6) When an employee declines an offer to transfer with his or her function to a location outside the commuting area, or is identified with such function but does not receive an offer at the gaining activity, and is placed in a position in a lower pay band at the